

with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

We have analyzed this rule under Department of Homeland Security Directive 0023.1 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. Therefore, this rule is categorically excluded, under section 2.B.2. figure 2-1, paragraph 32(e) of the Instruction and neither an environmental assessment nor an environmental impact statement is required. This rule involves the

promulgation of operating regulations or procedures for drawbridges.

### List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

### PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05-1(g); Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 117.897 by revising paragraphs (c) introductory text, (c)(3)(i), and (c)(3) (iii) to read as follows:

#### § 117.897 Willamette River.

\* \* \* \* \*

(c) The draws of the bridges listed in paragraph (c)(3) of this section shall open on signal if appropriate advance notice is given to the drawtender of the Hawthorne Bridge subject to the following requirements and exceptions:

\* \* \* \* \*

(3)(i) Broadway Bridge, mile 11.7, from 8 a.m. to 5 p.m. Monday through Friday, one hour's notice shall be given for draw openings. At all other times, notice of at least two hours in advance is required.

\* \* \* \* \*

(iii) Burnside Bridge, mile 12.4, from 8 a.m. to 5 p.m. Monday through Friday, one hour's notice shall be given for draw openings. At all other times, two hours notice is required.

\* \* \* \* \*

Dated: December 16, 2008.

**J.P. Currier,**

*Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.*

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### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 117

[USCG-2009-0004]

RIN 1625-AA09

#### Drawbridge Operation Regulations; Atlantic Intracoastal Waterway (AIWW), Elizabeth River, Southern Branch, VA, Maintenance

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Norfolk Southern #7 Railroad Bridge, at AIWW mile 5.8, across the Elizabeth River (Southern Branch) in Chesapeake, VA. Under this temporary deviation, the drawbridge may remain in the closed position on specific dates and times to facilitate structural repairs.

**DATES:** This deviation is effective from 5 a.m. on February 1, 2009, to 11 p.m. on May 10, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-0004 and are available online at [www.regulations.gov](http://www.regulations.gov). They are also available for inspection or copying at two locations: The Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704-5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bill H. Brazier, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398-6422.

**SUPPLEMENTARY INFORMATION:** The Norfolk Southern Corporation, who owns and operates this single-leaf bascule drawbridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.997(e) to facilitate structural repairs.

The Norfolk Southern #7 Bridge, at AIWW mile 5.8, across the Elizabeth River (Southern Branch) in Chesapeake, VA, has a vertical clearance in the closed position to vessels of 7 feet above mean high water.

To complete the replacement for the remaining segments of curved tread plates on the curved segmental girders on the lift span, the drawbridge will be maintained in the closed-to-navigation position beginning at 5 a.m. until and including 11 p.m. each Sunday on February 1, 2009, February 8, 2009, March 1, 2009, March 8, 2009, April 5, 2009, April 12, 2009, May 3, 2009, and May 10, 2009.

The Coast Guard will inform the users of the waterway through our Local and Broadcast Notices to Mariners of the opening restrictions of the draw span to

minimize transiting delays caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: January 12, 2009.

**Waverly W. Gregory, Jr.,**

*Chief, Bridge Administration Branch, Fifth Coast Guard District.*

[FR Doc. E9-2339 Filed 2-3-09; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2008-0112]

RIN 1625-AA11

#### “Gasco” Regulated Navigation Area, Willamette River, Portland, OR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a Regulated Navigation Area on the Willamette River, Portland, Oregon Captain of the Port Zone. This action is necessary to preserve the integrity of the clean engineered pilot cap placed over a portion of the NW Natural “Gasco” site (Site) remediation area as part of the Environmental Protection Agency (EPA) Superfund clean up action. This rule is needed to prohibit activities that would cause disturbance of pilot cap material which was placed to isolate and contain underlying contaminated sediment.

**DATES:** This rule is effective March 6, 2009.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2008-0112 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2008-0112 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at two locations: The Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE.,

Washington, D.C. 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and U.S. Coast Guard Sector Portland, 6767 North Basin Ave., Portland, OR 97217 between 8 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call MST1 Jaime Sayers, U.S. Coast Guard Sector Portland, Waterways Management Division, telephone 503-240-9300. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On June 2, 2008, we published a notice of proposed rulemaking (NPRM) entitled “‘Gasco’ Regulated Navigation Area, Willamette River, Portland, OR” in the *Federal Register* (73 FR 31397). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

##### Background and Purpose

On April 28, 2004, NW Natural entered into an Administrative Order with the U.S. Environmental Protection Agency to perform a number of actions in association with removing a tar body at the surface of the near shore sediment adjacent to the Site. The Site is located in the Portland Harbor Superfund site at approximately river mile 6.5 on the Willamette River. As part of these actions, a pilot cap was designed and constructed to cap over a portion of the removal area. The purpose of the pilot cap is to place a barrier over a portion of the removal area and monitor the performance of the pilot cap until the Portland Harbor Superfund Site Remedial Investigation/Feasibility Study is completed and a final remedy is evaluated for the Site. The information collected during the interim will be used to help evaluate contamination loading through the pilot cap due to residual contamination in sediments and/or potential ground water migration through the pilot cap, and to help determine whether capping might be an effective remedy for future remediation at the Site. Accordingly, a regulated navigation area is needed to limit disturbances to the pilot cap reducing a potential hazardous release into the Willamette River.

##### Discussion of Comments and Changes

No comments were received on this rule during the comment period such that no changes have been made to the rule.

##### Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

##### Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. The effect of this regulation will not be significant based on the fact there will be minimal, if any, effect on the navigable waterway around the regulated area due to the regulated navigation area’s proximity to the shore.

##### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Willamette River. This rule will not have a significant economic impact on a substantial number of small entities because the regulated navigation area is limited in size leaving ample room for vessels to navigate around the area. Vessels engaged in commerce with the existing refueling pipeline located within the site should not be affected by this regulation in those activities but are advised to minimize potential impacts such as anchoring, wake scouring, and dragging in the vicinity of the pilot cap.

##### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), in the NPRM we offered to assist small